

CIVIL PRACTICE AND REMEDIES CODE
TITLE 6. MISCELLANEOUS PROVISIONS
CHAPTER 147. YEAR 2000 COMPUTER DATE FAILURE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 147.001. DEFINITIONS. In this chapter:

(1) "Action" means a cause of action to which this chapter applies.

(2) "Claimant" means a party seeking recovery of damages or other relief, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff.

(3) "Computer product" means a computer, computer network, computer program, computer software, computer system, microprocessor, embedded computer chip, semiconductor device, any component of any of those items, or a product that includes any of those items as a component of the product.

(4) "Computer service product" means the product of the use of a computer, including uses related to data processing and storage. The term includes information stored in the computer by personnel supporting the computer.

(5) "Defendant" means a party from whom a claimant seeks recovery of damages or other relief, including a counterdefendant, cross-defendant, or third-party defendant.

(6) "Good faith" means honesty in fact in the conduct or transaction concerned.

(7) "Recent consumer product" means a mass-marketed computer product, intended by the seller to be used for personal, family, or household purposes or by small businesses, that will manifest a computer date failure during its normal use and was last offered for sale by the manufacturer after January 1, 1997, and in the case of software, was offered for a retail price of \$300 or less. The term does not include customized products.

(8) "Small business" means a legal entity, including a sole proprietorship, that:

- (A) is formed for the purpose of making a profit;
- (B) is independently owned and operated; and

(C) has fewer than 100 employees or less than \$1 million in annual gross receipts.

(9) "Year 2000 Project Office website" means the Texas Year 2000 Project Office website administered by the Department of Information Resources. The Internet address of the website is www.dir.state.tx.us/y2k.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.002. ACTION FOR COMPUTER DATE FAILURE. Subject to Section [147.004](#) and regardless of the legal theory, statute, or cause of action on which the action is based, including an action based in tort, contract, or breach of an express or implied warranty, this chapter applies only to an action in which a claimant seeks recovery of damages or any other relief for harm caused by:

(1) a computer date failure as described by Section [147.003](#); or

(2) the failure to properly detect, disclose, prevent, report, correct, cure, or remediate a computer date failure as described by Section [147.003](#).

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.003. COMPUTER DATE FAILURE. A computer date failure is the inability to correctly process, recognize, store, receive, transmit, or in any way use date data:

(1) referring to the year 2000 or affected by the transition between the 20th and 21st century or between 1999 and 2000; or

(2) with years expressed in a two-digit or four-digit format.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.004. APPLICABILITY. This chapter does not apply to an action:

(1) for death or bodily injury;

(2) to collect workers' compensation benefits under the workers' compensation laws of this state; or

(3) to enforce the terms of a written agreement, or to

seek contractual remedies for breach of a written agreement, that specifically provides for liability and damages for a computer date failure.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.005. DUTY OR ACTION NOT CREATED. (a) This chapter does not create a duty.

(b) This chapter does not create a cause of action.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.006. IMMUNITY NOT AFFECTED. This chapter does not expand or limit the immunity of a person under any other law or statute providing immunity.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.007. INSURANCE COVERAGE NOT AFFECTED. This chapter does not affect the coverage or benefits of parties under a contract of insurance.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.008. SOVEREIGN IMMUNITY NOT WAIVED. This chapter does not waive any immunity of the state or of a political subdivision of the state or any employee or officer thereof.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.009. MANUFACTURER'S DUTY TO INDEMNIFY. This chapter does not relieve a manufacturer from the obligation, if any, to indemnify a seller for losses arising out of a product liability action for property damage under Section [82.002](#), subject to any defenses the manufacturer could have asserted at the time the action was filed.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

SUBCHAPTER B. PREREQUISITES TO BRINGING ACTION

Sec. 147.041. LIMITATIONS PERIOD. (a) An action must be brought not later than two years after the date the computer date

failure first caused the harm that is the subject matter of the action.

(b) This section does not extend the limitations period within which an action for harm caused by a computer date failure may be commenced under any other law or revive a claim that is barred by the operation of any other law.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.042. REPOSE. (a) Except as provided by Subsection (b), a claimant must commence an action against a manufacturer or seller of a computer product or computer service product before the end of 15 years after the date of the sale by the defendant. If the computer product which caused the computer date failure is a component of another product and if the product and computer product were sold at different times, the 15-year period begins to run on the date the defendant sold the computer product.

(b) If a manufacturer or seller expressly represented that the computer product or computer service product would not manifest the computer date failure, this section does not apply.

(c) This section does not reduce a limitations period that applies to an action that accrues before the end of the limitations period under this section.

(d) This section does not extend the limitations period within which an action may be commenced under any other law.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.043. DISABILITY. Section [16.001](#) applies to the periods of limitation and repose established by this subchapter.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.044. NOTICE. (a) A claimant may not commence an action unless the claimant gave notice to the defendant before the 60th day preceding the date the action commences.

(b) If the 60-day notice requirement under Subsection (a) would prevent commencing the action before the expiration of the period of limitation or repose, the claimant must give notice to the defendant before the 31st day after the date the action commences.

(c) If the action is a counterclaim, cross-claim, or third-party action, the claimant must give notice to the defendant before the 31st day after the date of service on the defendant.

(d) The notice must:

- (1) be in writing;
- (2) identify the claimant;
- (3) describe in reasonable detail the computer date failure and the harm caused by the failure; and
- (4) include a specific statement of the amount of the damages claimed or the remedy sought.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.045. NOTICE STAYS PROCEEDINGS. All proceedings in the action are stayed for 60 days following the date the defendant received the notice under Section [147.044](#).

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.046. FAILURE TO GIVE NOTICE. (a) On motion of the defendant that the claimant did not give the notice under Section [147.044](#), the court shall:

- (1) abate the action; and
- (2) require the claimant to give the notice before the 31st day after the date of the order of abatement.

(b) The court shall dismiss the claimant's action if the claimant does not give notice as required by Subsection (a)(2).

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.047. INSPECTION. (a) A person receiving notice under Section [147.044](#) may inspect a computer product or computer service product that is subject to the claimant's control to assess the nature, scope, and consequences of the computer date failure.

(b) The inspection must be conducted in a reasonable manner and at a reasonable time and place.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.048. OFFER TO SETTLE. (a) A defendant receiving notice under Section [147.044](#) may offer to settle the claim. The

offer may include an offer to cure or correct the computer date failure.

(b) The offer must be accepted by the claimant not later than the 30th day after the date the offer is made or the offer is rejected.

(c) A defendant may file a rejected offer to settle with the court with an affidavit certifying its rejection.

(d) If the court finds that the amount tendered in a rejected offer to settle filed with the court is the same as, substantially the same as, or more than the damages found by the trier of fact, the claimant may not recover any amount in excess of the lesser of:

(1) the amount of damages tendered in the settlement offer; or

(2) the amount of damages found by the trier of fact.

(e) Subsection (d) does not apply if the court finds that the defendant making the offer:

(1) could not perform the offer when the offer was made; or

(2) substantially misrepresented the value of the offer.

(f) In this section, the term "damages" does not include attorney's fees or litigation expenses.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

SUBCHAPTER C. AFFIRMATIVE DEFENSES TO LIABILITY

Sec. 147.081. AFFIRMATIVE DEFENSE: NOTICE TO CURE OR CORRECT. (a) It is an affirmative defense to liability in an action if:

(1) the claimant was notified in the manner provided by Section [147.082](#) that the computer product or computer service product may manifest computer date failure;

(2) the claimant was offered a cure or correction for the computer date failure; and

(3) the offered cure or correction would have avoided the harm to the claimant caused by the computer date failure.

(b) In addition to the requirement of Subsection (a), to establish the affirmative defense provided by this section:

(1) if the claimant's action involves a recent consumer product, the defendant must prove that the charge, if any, for the cure or correction did not exceed the reasonable charges for the delivery and installation of the product or items needed to cure or correct the computer date failure; or

(2) if the claimant's action involves a computer product or computer service product that is not a recent consumer product, the defendant must prove that the charge, if any, for the cure or correction did not exceed the reasonable and necessary costs to develop, produce, deliver, and install the product or items needed to cure or correct the computer date failure.

(c) If the cure or correction described by Subsection (a) is designed to cure or correct a computer date failure for only a limited period of time, that cure or correction does not entitle a person to a defense to liability for harm caused by the computer date failure after the period of time expires.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.082. NOTICE. (a) Notice under Section [147.081](#) must:

(1) identify the computer product or computer service product that manifests or may manifest a computer date failure;

(2) explain how a cure or correction to the computer product or computer service product may be obtained;

(3)(A) in the case of a recent consumer product, state that there is no additional charge for the cure or correction and state the amount that will be charged, if any, for delivering and installing the cure or correction, as authorized by Section [147.081](#)(b)(1); or

(B) in the case of a product or service that is not a recent consumer product, state the amount that will be charged, if any, for the cure or correction, as authorized by Section [147.081](#)(b)(2); and

(4) inform the recipient that the solution is offered to avoid harm to the recipient and that offering the cure or

correction could affect the recipient's right to recover damages.

(b) Notice under Section 147.081 must be received by the claimant before the beginning of the longer of the following periods:

(1) the 90th day before the date the claimant suffers harm from the computer date failure; or

(2) the time needed to order, deliver, and install the correction to the product or service before the claimant suffers harm from the computer date failure.

(c) The defendant may satisfy the notice requirement under Section 147.081 by showing that:

(1) the defendant delivered notice within the period provided by this section; or

(2) the claimant actually received notice within the period provided by this section.

(d) There is a rebuttable presumption that notice has been delivered to a claimant if the Year 2000 Project Office website or toll-free telephone number established under Section 147.083(e) provides access to information from which a person may obtain the information required by this section relating to a cure or correction for the computer date failure. The presumption may be rebutted by credible evidence that the claimant did not receive notice.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.083. NOTICE ON YEAR 2000 PROJECT OFFICE WEBSITE.

(a) A person who provides information to the Year 2000 Project Office website to satisfy the requirements of Section 147.082 is responsible for the accuracy of the person's information posted on the website.

(b) A person is not subject to the jurisdiction of the courts of this state solely on the basis that the person has provided information for posting on the Year 2000 Project Office website.

(c) The state is not liable for any damages arising from its Year 2000-related activities conducted by the Department of Information Resources, including:

(1) operation of the Year 2000 Project Office website;

(2) reliance on the accuracy of the information on the Year 2000 Project Office website; or

(3) operation and management of the toll-free telephone number established in accordance with Subsection (e).

(d) The Department of Information Resources in its Year 2000 Project Office website shall provide for the posting of information and the creating of links to other websites to facilitate the posting of notice.

(e) The Department of Information Resources shall establish a toll-free telephone number for persons who are unable to access the Internet to provide to those persons information relating to a cure or correction for computer date failure posted on or linked to the Year 2000 Project Office website. The Department of Information Resources may establish the toll-free telephone number either in cooperation with the General Services Commission or by contracting with a private vendor.

(f) Any contracts for goods or services between the Department of Information Resources and private vendors that may be necessary or appropriate to the fulfillment of the requirements of this section are exempt from the requirements of Subtitle D, Title 10, Government Code. If the Department of Information Resources elects to contract with one or more private vendors, the vendors have no greater liability to third parties for their actions than the state would have had if it had provided the goods and services directly.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.084. AFFIRMATIVE DEFENSE: RELIANCE. (a) In an action for fraud, misrepresentation, disparagement, libel, or other similar action based on the alleged falsity or misleading character of a computer date statement or an express warranty, it is an affirmative defense to liability that:

(1) the defendant reasonably relied on the computer date statement or express warranty of an independent, upstream manufacturer or seller of the computer product or computer service product that the computer product or computer service product would

not manifest computer date failure;

(2) the statement was false or misleading; and

(3) the defendant did not have actual knowledge that the statement or warranty was false or misleading.

(b) In this section, "computer date statement" means a material statement about a computer product or computer service product regarding the present or future ability of a computer product in relation to avoiding computer date failure, including a statement that a computer product or computer service product:

(1) is "Year 2000 Compliant" or a similar representation; or

(2) complies with a computer date standard established by a state or federal regulatory agency or by a national or international standards organization.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.085. ADMISSIBILITY OF STATEMENT RELATING TO COMPUTER DATE FAILURE. (a) The following are not admissible to prove liability for computer date failure:

(1) an offer to settle under Section [147.048](#);

(2) notice required under Section [147.081\(a\)\(1\)](#);

(3) except as provided by Subsection (b), evidence of furnishing or offering or promising to furnish a correction or cure for a present or future computer date failure; or

(4) except as provided by Subsection (c), a statement made in the process of correcting, curing, or attempting to correct or cure a present or future computer date failure.

(b) Evidence of furnishing or offering or promising to furnish a correction or cure for a present or future computer date failure is admissible to the extent it is evidence of a guarantee or warranty of the correction or cure and the claim is for breach of the guarantee or warranty.

(c) A statement made in the process of correcting, curing, or attempting to correct or cure a present or future computer date failure is admissible if:

(1) the statement is false;

(2) the statement is made with knowledge that it is

false; and

(3) the claimant relied on the statement to the claimant's detriment.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

SUBCHAPTER D. DAMAGES

Sec. 147.121. DAMAGE LIMITATIONS APPLY ONLY IF DEFENDANT SHOWS GOOD FAITH EFFORT TO CURE OR CORRECT. The limitations on the recovery of damages established by Section 147.122 apply to a claimant only if the defendant can show a good faith effort to cure, correct, avoid, or mitigate the claimant's possible computer data failure problem.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.122. DAMAGES NOT RECOVERABLE. (a) Subject to Section 147.121, a claimant may not recover the following damages in an action:

(1) damages for mental anguish, loss of consortium, or loss of companionship;

(2) exemplary or punitive damages unless the claimant proves by clear and convincing evidence that the conduct of the defendant was committed with fraud or malice;

(3) additional damages under Section 17.50(b)(1), Business & Commerce Code, unless the trier of fact finds the conduct of the defendant was committed with fraud or malice; or

(4) consequential damages, unless they were reasonably foreseeable.

(b) In this section:

(1) "Fraud" means fraud other than constructive fraud.

(2) "Malice" means a specific intent by the defendant to cause substantial injury to the claimant.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.

Sec. 147.123. MITIGATION OF DAMAGES. (a) In an action to which Chapter 33 applies, the court shall instruct the finder of fact regarding the determination of responsibility pursuant to

Section 33.003 using the appropriate approved pattern jury charge which may be modified by the court as appropriate to the circumstances.

(b) In all actions not governed by Subsection (a), the court shall instruct the finder of fact regarding a claimant's duty to mitigate or avoid damages in a manner appropriate to the action using the appropriate approved pattern jury charge which may be modified by the court as appropriate to the circumstances.

Added by Acts 1999, 76th Leg., ch. 128, Sec. 2, eff. May 19, 1999.